

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PAUL SCOTT KLEIN,

Case No. 3:23-cv-00337-ART-CSD

Plaintiff,

ORDER

v.

MICHAEL FLAMM, et al.,

Defendants.

This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF No. 1). Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

The Court entered a screening order on December 20, 2023. (ECF No. 3). A follow-up order imposed a 90-day stay and the Court entered a subsequent order in which the parties were assigned to mediation by a court-appointed mediator. (ECF Nos. 8, 10). The Office of the Attorney General has filed a status report indicating that settlement has not been reached and informing the Court of its intent to proceed with this action. (ECF No. 15).

Plaintiff also filed a motion to withdraw his motion to dismiss Defendant Jose Garcia. (ECF No. 12). The motion is granted. The Court notes that it had not taken any previous action on the notice/correction to dismiss Garcia (ECF No. 6). Garcia remains a defendant in this action.

Plaintiff also files a motion to file a supplemental complaint and attaches the proposed supplemental complaint. (ECF Nos. 13, 13-1). Pursuant to Federal Rule of Civil Procedure 15(d), “[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” The Supreme Court has held that Rule 15(d) “plainly permits supplemental amendments to cover events

1 happening after suit, and it follows, of course, that persons participating in these new
2 events may be added if necessary. Such amendments are well within the basic aim of the
3 rules to make pleadings a means to achieve an orderly and fair administration of
4 justice.” *Griffin v. Cty. Sch. Bd. of Prince Edward Cty.*, 377 U.S. 218, 227 (1964). “While
5 leave to permit supplemental pleading is ‘favored,’ . . . it cannot be used to introduce a
6 ‘separate, distinct and new cause of action.’” *Planned Parenthood of S. Arizona v. Neely*,
7 130 F.3d 400, 402 (9th Cir. 1997).

8 The Court denies the motion for leave to file a supplemental complaint. (ECF No.
9 13). Plaintiff initiated the instant action on July 10, 2023. (See ECF No. 1). Plaintiff’s
10 supplemental complaint addresses events that took place between May 31, 2022, through
11 August 30, 2022. (See ECF No. 13-1 at 4). As such, the supplemental complaint is
12 improper because it is not attempting to set out any transaction, occurrence, or event that
13 happened after Plaintiff submitted his initial complaint.

14 For the foregoing reasons, **IT IS ORDERED** that:

15 1. Plaintiff’s application to proceed *in forma pauperis* (ECF No. 1) is
16 **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In
17 the event that this action is dismissed, the full filing fee must still be paid pursuant to 28
18 U.S.C. § 1915(b)(2).

19 2. The movant herein is permitted to maintain this action to conclusion without
20 the necessity of prepayment of any additional fees or costs or the giving of security
21 therefor.

22 3. Pursuant to 28 U.S.C. § 1915, the Nevada Department of Corrections will
23 forward payments from the account of **Paul Scott Klein, #30918** to the Clerk of the United
24 States District Court, District of Nevada, 20% of the preceding month’s deposits (in
25 months that the account exceeds \$10.00) until the full \$350 filing fee has been paid for
26 this action. The Clerk of the Court will send a copy of this order to the Finance Division
27 of the Clerk’s Office. The Clerk will send a copy of this order to the attention of **Chief of**
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1 **Inmate Services for the Nevada Department of Corrections** at
2 formapauperis@doc.nv.gov.

3 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and
4 a copy of Plaintiff's complaint (ECF No. 4) on the Office of the Attorney General of the
5 State of Nevada by adding the Attorney General of the State of Nevada to the docket
6 sheet. This does not indicate acceptance of service.

7 5. Service must be perfected within ninety (90) days from the date of this order
8 pursuant to Fed. R. Civ. P. 4(m).

9 6. Subject to the findings of the screening and follow-up orders (ECF Nos. 3,
10 8), within twenty-one (21) days of the date of entry of this order, the Attorney General's
11 Office shall file a notice advising the Court and Plaintiff of: (a) the names of the defendants
12 for whom it accepts service; (b) the names of the defendants for whom it does not accept
13 service, and (c) the names of the defendants for whom it is filing the last-known-address
14 information under seal. As to any of the named defendants for whom the Attorney
15 General's Office cannot accept service, the Office shall file, under seal, but shall not serve
16 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such
17 information. If the last known address of the defendant(s) is a post office box, the Attorney
18 General's Office shall attempt to obtain and provide the last known physical address(es).

19 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
20 shall file a motion identifying the unserved defendant(s), requesting issuance of a
21 summons, and specifying a full name and address for the defendant(s). For the
22 defendant(s) as to which the Attorney General has not provided last-known-address
23 information, Plaintiff shall provide the full name and address for the defendant(s).

24 8. If the Attorney General accepts service of process for any named
25 defendant(s), such defendant(s) shall file and serve an answer or other response to the
26 complaint (ECF No. 4) within sixty (60) days from the date of this order.

27 9. Plaintiff shall serve upon defendant(s) or, if an appearance has been
28 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other

1 document submitted for consideration by the Court. If Plaintiff electronically files a
2 document with the Court's electronic-filing system, no certificate of service is required.
3 Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-1(b); Nev. Loc. R. 5-1. However, if Plaintiff
4 mails the document to the Court, Plaintiff shall include with the original document
5 submitted for filing a certificate stating the date that a true and correct copy of the
6 document was mailed to the defendants or counsel for the defendants. If counsel has
7 entered a notice of appearance, Plaintiff shall direct service to the individual attorney
8 named in the notice of appearance, at the physical or electronic address stated therein.
9 The Court may disregard any document received by a district judge or magistrate judge
10 which has not been filed with the Clerk, and any document received by a district judge,
11 magistrate judge, or the Clerk which fails to include a certificate showing proper service
12 when required.

13 10. This case is no longer stayed.

14 11. The motion to withdraw motion to dismiss Defendant Jose Garcia (ECF No.
15 12) is granted. Defendant Garcia remains a defendant in this case.

16 12. The motion for leave to file a supplemental complaint (ECF No. 13) is
17 denied.

18 DATED THIS 2nd day of May 2024.

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21 UNITED STATES MAGISTRATE JUDGE
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